

HOUSE BILL NO. 228

INTRODUCED BY K. KERNS, ANKNEY, ARNTZEN, BALLYEAT, BENNETT, BLACK, BLASDEL, BONIEK,
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INGRAHAM, JACKSON, JONES, KOTTEL, MCGEE, MEHLHOFF, MILLER, MORE, RANDALL,
ROUNDSTONE, SMITH, SONJU, VANCE, WARBURTON

A BILL FOR AN ACT ENTITLED: "AN ACT PRESERVING AND CLARIFYING LAWS RELATING TO THE
RIGHT OF SELF-DEFENSE AND THE RIGHT TO BEAR ARMS; AMENDING SECTIONS 45-8-315, ~~45-8-316~~,
45-8-405, AND 46-6-502, MCA; AND REPEALING SECTIONs 45-8-316 and 45-8-317, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. The legislature declares that:

(1) the right of Montanans to defend their lives and liberties, as provided in Article II, section 3, of the
Montana constitution, and their right to keep or bear arms in defense of their homes, persons, and property, as
provided in Article II, section 12, of the Montana constitution, is fundamental and may not be called into question;

(2) the use of firearms for self-defense is recognized within the right reserved to the individual people
of Montana in Article II, section 12, of the Montana constitution;

(3) self-defense is a natural right under 1-2-104 and is included in 49-1-101 and 49-1-103;

(4) the lawful use of firearms for self-defense is not a crime or an offense against the people of the state;

~~(5) if self-defense is asserted by a defendant in a criminal action, the state has the burden to prove the
absence of justification beyond a reasonable doubt;~~

(5) in a criminal trial, when the defendant has offered evidence of having acted in self-defense, the state
has the burden of proving beyond a reasonable doubt that the defendant did not act in reasonable self-defense;

(6) the use of firearms for self-defense discourages violent crime and prevents victimization; and

(7) the purpose of [sections 1 through 5 4] is to clarify and secure the ability of the people to protect
themselves from wrongful assault.

NEW SECTION. Section 2. No duty to summon help or flee. (1) Except as provided in 45-3-105,
a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty

1 to retreat from a threat or summon law enforcement assistance prior to acting in self-defense.

2 (2) Any occupant of a dwelling is justified in using any degree of physical force, including deadly force,
3 against another person if:

4 (a) that other person has made an unlawful entry into the dwelling;

5 (b) the occupant has a reasonable belief that the other person:

6 (i) has committed a crime in the dwelling in addition to the unlawful entry; or

7 (ii) is committing or intends to commit a crime against a person or property in addition to the unlawful
8 entry; and

9 (c) the occupant reasonably believes that the other person might use any physical force, no matter how
10 slight, against any occupant of the dwelling.

11 (3) Any occupant of a dwelling who uses physical force, including deadly force, in accordance with the
12 provisions of subsection (2) is immune from criminal prosecution and civil liability for injuries or death resulting
13 from the use of such force.

14
15 ~~NEW SECTION. Section 3. Defensive display of firearm not offense. (1) A person who displays or~~
16 ~~shows a firearm TO A PERSON OTHER THAN AN IDENTIFIED PEACE OFFICER for a harmless defensive purpose needs~~
17 ~~no justification for the display and may not be charged with or convicted of an offense for that display.~~

18 ~~(2) Displaying or showing a firearm includes but is not limited to:~~

19 ~~(a) openly wearing, carrying, or possessing a firearm;~~

20 ~~(b) verbally informing another that one possesses a firearm; and~~

21 ~~(c) holding a firearm in a position so that the firearm does not point directly at another person.~~

22 ~~(3) The right to show or display a firearm does not include the following situations, and justification is~~
23 ~~required for the display:~~

24 ~~(a) intentionally or recklessly pointing a firearm directly at another person or sweeping another person~~
25 ~~with the muzzle of a firearm;~~

26 ~~(b) intentionally discharging a firearm in the direction of another person; or~~

27 ~~(c) deliberately provoking another person into threatening words or actions when possessing a firearm;~~

28 ~~(D) NEGLIGENTLY OR PURPOSEFULLY THREATENING A PEACE OFFICER WITH A FIREARM;~~

29 ~~(E) DISPLAYING A FIREARM DURING THE COMMISSION OF A FORCIBLE FELONY; OR~~

30 ~~(F) DISPLAYING A FIREARM AS PART OF A PATTERN OF CRIMINAL STREET GANG ACTIVITY AS DEFINED IN 45-8-405.~~

1
2 **NEW SECTION. Section 3. Openly carrying weapon -- display.** (1) Any person who is not otherwise
3 prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another
4 person the fact that the person has a weapon. It is not necessary that the person believes that the person is
5 threatened for the communication to be lawful.

6 (2) If a person reasonably believes that the person or another person is threatened with bodily harm,
7 the person may threaten the use of deadly force against the aggressor, including presenting a weapon in an
8 appropriate circumstance.

9
10 **NEW SECTION. Section 4. Investigation of alleged offense involving self-defense claim.** When
11 an investigation is conducted by a peace officer of an incident that appears to have been or is alleged to have
12 been in self-defense, the investigation must be conducted so as to disclose all evidence, including testimony,
13 that might support the alleged offense and the apparent or alleged self-defense.

14
15 ~~**NEW SECTION. Section 5. Award of attorney fees and costs -- charge dismissed -- person found**~~
16 ~~**not guilty.**~~ In a criminal prosecution of a person who is accused of an offense and who asserts the right of
17 self-defense under Article II, section 12, of the Montana constitution, if the charge is dismissed or the person is
18 found not guilty, the court shall award the person reasonable attorney fees and costs specific to the defense of
19 the charge.

20
21 ~~**NEW SECTION. Section 6. Conditions for seizure of firearm -- return of seized firearm.**~~ (1) Unless
22 a firearm is seized pursuant to 46-5-401, a peace officer may seize a legally possessed firearm only:

23 ~~(a) at an incident in which a firearm is present and a peace officer on the scene has probable cause~~
24 ~~to believe that the firearm was used to commit a crime. However, the peace officer may take only that firearm~~
25 ~~and no other into temporary custody, for up to 2 hours, to secure the safety of persons at the scene. If an arrest~~
26 ~~is not made, the firearm must be returned to the person from whom it was seized or to the rightful owner if that~~
27 ~~is determined to be another person no later than the end of the 2-hour custody period, unless a court order is~~
28 ~~obtained to retain the firearm.~~

29 ~~(b) if a person is arrested because of probable cause to believe that the person has committed a crime~~
30 ~~and it is alleged with probable cause that the firearm has been used to further that crime. The firearm must be~~

1 returned to the person from whom it was seized or to the rightful owner, if that is determined to be a different
2 person, unless a court order is obtained to retain the firearm, within 2 weeks of the seizure if a criminal charge
3 has not been filed against the person from whom the firearm was seized.

4 ~~—— (2) If a criminal charge against a person from whom a firearm has been seized is dismissed or the~~
5 ~~person is found not guilty, the firearm must be returned to the person or to the rightful owner if that is determined~~
6 ~~to be a different person within 48 hours of the dismissal or of a verdict of not guilty if no other charges directly~~
7 ~~relating to the firearm are pending.~~

8 ~~—— (3) A person from whom a firearm is seized or kept in a manner that is not consistent with this section~~
9 ~~may compel the return of the firearm by demanding the return in writing, without regard to the form of the writing,~~
10 ~~delivered to a representative of the law enforcement agency that initially seized the firearm. The demand must~~
11 ~~be honored within 24 hours. This process does not require an order of any court to be effective. If the firearm~~
12 ~~is not returned, the person may seek an immediate writ of mandamus from the district court judge or justice of~~
13 ~~the peace to compel the return. The person may also seek judicial sanctions and reasonable attorney fees if the~~
14 ~~person prevails against a law enforcement agency that has failed to comply with the initial demand for return.~~
15 ~~A person who may not legally possess any firearm or the type of firearm seized is not authorized to demand the~~
16 ~~return of a firearm under this subsection.~~

17 ~~—— (4) A peace officer or law enforcement agency in possession of a firearm under this section shall~~
18 ~~exercise due care to prevent loss of or damage to the firearm and may be held liable for any loss or damage.~~

19 ~~—— (5) If a peace officer or law enforcement agency seizes a firearm under this section, the person from~~
20 ~~whom the firearm was seized must be given a receipt for the firearm by the officer who seized the firearm or by~~
21 ~~another officer from the seizing officer's agency. The receipt must contain enough specificity to identify the~~
22 ~~firearm and must be given by either of those officers before the seizing officer leaves the scene of the seizure.~~

23
24 **NEW SECTION. Section 5. Firearm not to be destroyed.** If a firearm possessed by a law
25 enforcement agency was not purchased by the agency for agency use, if it is legal for a private person to own
26 and possess the firearm, and if the legal owner cannot be determined by the agency, the agency may not
27 destroy the firearm and shall sell the firearm to a licensed dealer. The proceeds of the sale must be deposited
28 in the general fund of the governmental entity of which the agency is a part.

29
30 **NEW SECTION. Section 6. Landlords and tenants -- no firearm prohibition allowed. (1) A**

1 landlord or operator of a hotel or motel may not, by contract or otherwise, prevent a tenant or a guest of a tenant
2 from possessing on the premises a firearm that it is legal for the tenant or guest to possess. A landlord or
3 operator of a hotel or motel may prohibit the discharge of a firearm on the premises except in self-defense.

4 (2) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO HOUSING PROVIDED BY THE MONTANA UNIVERSITY
5 SYSTEM AND OTHER POSTSECONDARY INSTITUTIONS.

6
7 ~~NEW SECTION. Section 9. Employer prohibition of means of self-defense. (1) An employer who~~
8 ~~as a condition of employment prohibits an employee from possessing the means of defending the employee in~~
9 ~~the workplace, including the possession of firearms, shall provide a level of security and safety for the employee~~
10 ~~equal to that which the employee could have provided without the prohibition. An employer who violates this~~
11 ~~requirement is liable for injury to the employee caused by a criminal act against the employee at the workplace~~
12 ~~if the injury would not have occurred but for the employer's prohibition. This subsection does not apply to an~~
13 ~~employee of the government of the United States or of a school district of this state.~~

14 ~~(2) An employer may not prohibit an employee from keeping a firearm in a vehicle owned by the~~
15 ~~employee and parked at the workplace.~~

16
17 **Section 7.** Section 45-8-315, MCA, is amended to read:

18 **"45-8-315. Definition.** "Concealed weapon" means any weapon mentioned in ~~45-8-316, through~~
19 ~~45-8-318, and 45-8-321 through 45-8-328, and [section 8]~~ that is wholly or partially covered by the clothing or
20 wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through
21 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly
22 or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon."

23
24 ~~Section 8.~~ Section 45-8-316, MCA, is amended to read:

25 ~~"45-8-316. Carrying concealed weapons. (1) Every A person who carries or bears concealed upon~~
26 ~~his the person, if using it to commit a criminal offense, a dirk, dagger, pistol, revolver, slingshot, sword cane, billy,~~
27 ~~knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including~~
28 ~~a safety razor, or other deadly weapon shall be punished by a fine not exceeding \$500 or imprisonment in the~~
29 ~~county jail for a period not exceeding 6 months, or both.~~

30 ~~(2) A person who has previously been convicted of an offense, committed on a different occasion than~~

~~the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his the person, if using it to commit a criminal offense, any of the weapons described in subsection (1) shall be punished by a fine not exceeding \$1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both."~~

NEW SECTION. SECTION 8. CARRYING CONCEALED WEAPON. A person may carry a concealed weapon upon the person unless the person is prohibited by 45-8-321(1)(a) through (1)(h) from obtaining a concealed weapon permit.

SECTION 9. SECTION 45-8-405, MCA, IS AMENDED TO READ:

"45-8-405. Pattern of criminal street gang activity. (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, attempt, adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were committed on separate occasions.

(2) The offenses that form a pattern of criminal street gang activity include:

- (a) deliberate homicide, as defined in 45-5-102;
- (b) assault with a weapon, as defined in 45-5-213;
- (c) intimidation, as defined in 45-5-203;
- (d) kidnapping, as defined in 45-5-302;
- (e) aggravated kidnapping, as defined in 45-5-303;
- (f) robbery, as defined in 45-5-401;
- (g) sexual intercourse without consent, as defined in 45-5-503;
- (h) aggravated promotion of prostitution, as defined in 45-5-603;
- (i) criminal mischief, as defined in 45-6-101;
- (j) arson, as defined in 45-6-103;
- (k) burglary, as defined in 45-6-204;
- (l) theft, as defined in 45-6-301;
- (m) forgery, as defined in 45-6-325;
- (n) tampering with witnesses and informants, as defined in 45-7-206;
- (o) bringing armed men into the state, as defined in 45-8-106;

- (p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;
- (q) carrying a concealed weapon, as defined in ~~45-8-316~~ 45-8-315;
- (r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;
- (s) possession of a destructive device, as defined in 45-8-334;
- (t) possession of explosives, as defined in 45-8-335;
- (u) possession of a sawed-off firearm, as defined in 45-8-340;
- (v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;
- (w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in 45-8-403."

{Internal References to 45-8-405:

45-8-402 45-8-402 45-8-406 }

NEW SECTION. Section 10. Eligibility for permit. A person who has been convicted of a felony and whose rights have been restored pursuant to Article II, section 28, of the Montana constitution is entitled to issuance of a concealed weapons permit if otherwise eligible.

Section 11. Section 46-6-502, MCA, is amended to read:

"46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. The private person may use reasonable force to detain the arrested person. Force likely to cause death or serious bodily harm may be used only under the conditions specified in 45-3-101 through 45-3-106.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency."

NEW SECTION. Section 12. Repealer. Sections 45-8-316 and 45-8-317, MCA, is repealed.

NEW SECTION. Section 13. Codification instruction. (1) [Sections 1 through 5 4 AND 9] are intended to be codified as an integral part of Title 45, chapter 3, part 1, and the provisions of Title 45, chapter 3, part 1,

1 apply to [sections 1 through 5 4 AND 9].

2 ~~(2) [Section 6] is intended to be codified as an integral part of Title 46, chapter 5, part 1, and the~~
3 ~~provisions of Title 46, chapter 5, part 1, apply to [section 6].~~

4 ~~(3)(2) [Section 7 5] is intended to be codified as an integral part of Title 46, chapter 5, part 3, and the~~
5 ~~provisions of Title 46, chapter 5, part 3, apply to [section 7 5].~~

6 ~~(4)(3) [Section 8 6] is intended to be codified as an integral part of Title 70, chapter 1, part 4, and the~~
7 ~~provisions of Title 70, chapter 1, part 4, apply to [section 8 6].~~

8 ~~(5) [Section 9] is intended to be codified as an integral part of Title 39, chapter 2, and the provisions of~~
9 ~~Title 39, chapter 2, apply to [section 9].~~

10 (4) [Section 8] is intended to be codified as an integral part of Title 45, chapter 8, part 3, and the
11 provisions of Title 45, chapter 8, part 3, apply to [section 6].

12 - END -